

PUBLIC Law, Chapter 347

SIGNED on 2007-06-20 - First Regular Session - 123rd Legislature

An Act To Enact the Informed Growth Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA c. 187, sub-c. 3-A is enacted to read:

SUBCHAPTER 3-A

Informed Growth Act

§ 4365. Short title

This subchapter may be known and cited as "the Informed Growth Act."

§ 4366. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Comprehensive economic impact area. "Comprehensive economic impact area" means the geographic area affected by a proposed large-scale retail development. This area includes the municipality and abutting municipalities.

2. Comprehensive economic impact study. "Comprehensive economic impact study" means a municipal study that estimates the effects of a large-scale retail development on the local economy, downtown and community pursuant to section 4367, subsection 4.

3. Downtown. "Downtown" means the central business district of a community that serves as the center for socioeconomic interaction in the community and is characterized by a cohesive core of commercial and mixed-use buildings, often interspersed with civic, religious and residential buildings and public spaces, typically arranged along a main street and intersecting side streets, walkable and served by public infrastructure.

4. Gross floor area. "Gross floor area" means the aggregate of the areas of each floor of a building or structure, including accessory structures, measured between the exterior faces of the exterior walls or limits of the building or structure at the level of each floor.

5. Land use permit. "Land use permit" means a municipal permit or approval required by a municipal land ordinance, site plan ordinance, subdivision ordinance, zoning ordinance or building permit ordinance or by the state subdivision law pursuant to subchapter 4.

6. Large-scale retail development. "Large-scale retail development" means any retail business establishment having a gross floor area of 75,000 square feet or more in one or more buildings at the same location, and any expansion or renovation of an existing building or buildings that results in a retail business establishment's having a gross floor area of 75,000 square feet or more in one or more buildings except when the expansion of an existing retail business establishment is less than 20,000 square feet. Other retail business establishments on the same site as the large-scale retail business establishment are not included in this definition unless they share a common check stand, management, controlling ownership or storage areas.

7. Municipal reviewing authority. "Municipal reviewing authority" means the municipal planning board, agency or office or, if none, the municipal officers.

8. Office. "Office" means the Executive Department, State Planning Office.

9. Retail business establishment. "Retail business establishment" means a business engaged in the sale of goods to the ultimate consumer for direct use or consumption.

10. Undue adverse impact. "Undue adverse impact" means that, within the comprehensive economic impact area, the estimated overall negative effects on the factors listed for consideration in section 4367, subsection 4 outweigh the estimated overall positive effects on those factors and that the estimated negative effects of at least 2 of the factors listed in section 4367, subsection 4, paragraph A outweigh the positive effects on those factors.

§ 4367. Preparation of comprehensive economic impact study

As part of its review of a land use permit application for a large-scale retail development, a municipal reviewing authority shall require the preparation of a comprehensive economic impact study.

1. Qualified preparer. A comprehensive economic impact study must be prepared by a person, other than the applicant for a large-scale retail development, listed by the office as qualified by education, training and experience to prepare such a study. The office shall provide the list of qualified preparers to a municipal reviewing authority and land use permit applicant upon request. The office shall adopt routine technical rules under Title 5, chapter 375, subchapter 2-A to carry out the purposes of this subsection.

2. Selection of preparer. The selection of the preparer must be mutually agreed upon by the municipal reviewing authority and the applicant. If no mutual agreement is reached within 15 days, the municipal reviewing authority shall select the preparer. The preparer must be qualified in accordance with subsection 1.

3. Payment. The applicant for the permit shall pay a fee of \$40,000 to the office to be deposited into a dedicated revenue account. The development application is not complete for processing until the office confirms that the fee has been paid.

The office shall disburse to the municipality from the dedicated account an amount equal to the municipality's projected costs of the comprehensive economic impact study contract, notice of the public hearing and related municipal staff support. The municipality's contract for the study must be defined and priced to ensure that the \$40,000 fee will be sufficient to cover both the costs of the study and the costs listed in this subsection. The office may charge against the fee an amount sufficient to cover its costs to record, administer and disburse the fee, but which may not exceed \$1,000. Any unexpended funds from the \$40,000 fee must be returned to the applicant.

4. Comprehensive economic impact study. The comprehensive economic impact study must be completed within 4 months of the filing of the application and must be made available to the municipal reviewing authority, the applicant and the public. It must estimate the effects of the large-scale retail development as set out in this subsection.

A. The comprehensive economic impact study, using existing studies and data and through the collection and analysis of new data, must identify the economic effects of the large-scale retail development on existing retail operations; supply and demand for retail space; number and location of existing retail establishments where there is overlap of goods and services offered; employment, including projected net job creation and loss; retail wages and benefits; captured share of existing retail sales; sales revenue retained and reinvested in the comprehensive economic impact area; municipal revenues generated; municipal capital, service and maintenance costs caused by the development's construction and operation, including costs of roads and police, fire, rescue and sewer services; the amount of public subsidies, including tax increment financing; and public water utility, sewage disposal and solid waste disposal capacity.

B. The comprehensive economic impact study must identify, to the extent that there are available for reference, existing studies and data, the general environmental effects on those factors enumerated in section 4404, regardless of whether the project is a subdivision, and in Title 38, sections 480-D and 484, regardless of the acreage of the project site.

§ 4368. Public hearing

1. Public participation required. The municipal reviewing authority shall provide the public with an adequate opportunity to be heard prior to the approval of a permit for a large-scale retail development.

2. Notice. Notice of the public hearing on the land use permit application must state that the comprehensive economic impact study will be presented at the hearing and that the municipal reviewing authority will take testimony on the comprehensive impact of the proposed large-scale retail development, and the notice must include the name of any potential retailer, a map of the development location and a map of the comprehensive economic impact area. The municipality shall also provide notice by regular mail to municipal officers of abutting municipalities and to all property owners within 1,000 feet of the proposed development.

3. Public disclosure of the applicant. If the applicant for a large-scale retail development is not the potential retailer, the applicant shall disclose in its application and at the public hearing the name of the potential retailer, including its commonly used retail name.

§ 4369. Land use permit approval

The municipal reviewing authority shall evaluate the impacts of the proposed large-scale retail development based on the comprehensive economic impact study; other materials submitted to the municipal reviewing authority by any person, including the applicant, state agencies, nonprofit organizations and members of the public; and testimony received during the public hearing under section 4368 to issue a finding of undue adverse impact or no undue adverse impact. The municipal reviewing authority may issue a land use permit for a large-scale retail development only if it determines that there is likely to be no undue adverse impact.

Nothing in this Act may preclude a municipality from adopting an ordinance to authorize additional studies and criteria regarding the effects of a proposed large-scale retail development. The requirements of this Act are in addition to all other required federal, state and local land use permit processes that pertain to a proposed large-scale retail development.

§ 4370. Appeal

The provisions of this subchapter granting persons, municipalities, the State and other entities the opportunity to provide input on a municipal land use permit or approval do not, and may not be interpreted to, authorize persons or entities who would not, absent the provisions of this subchapter, have an interest in or otherwise have standing to appeal a municipal action on the permit or approval.

§ 4371. Exemption

The provisions of this subchapter do not apply to a municipality that has adopted economic and community impact review criteria that apply to large-scale retail development land use permit applications and that require a study of the comprehensive economic and community impacts of the proposed large-scale retail development for consideration, among other evidence, in applying the review criteria to the application.

Sec. 2. Construction. Nothing in this Act may be construed to limit the ability of a municipality that, after the effective date of this Act, adopts economic and community impact review criteria that apply to large-scale retail development land use permit applications to be exempt from the provisions of the Maine Revised Statutes, Title 30-A, chapter 187, subchapter 3-A in accordance with Title 30-A, section 4371.